



Virginia  
Regulatory  
Town Hall

## Periodic Review and Notice of Intended Regulatory Action Agency Background Document

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| <b>Agency Name:</b>        | Department of Social Services  |
| <b>VAC Chapter Number:</b> | 22 VAC 40-141  |
| <b>Regulation Title:</b>   | Minimum Standards for Licensed Independent Foster Homes                                      |
| <b>Action Title:</b>       | Amend regulations as a result of the Periodic Review and changes within the Code of Virginia |
| <b>Date:</b>               | July 17, 2002  |

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

This regulation is considered essential to protect the health, safety and welfare of children who are temporarily placed by their parents or legal guardians directly into a foster home, independent of local departments of social services or a licensed child-placing agency. The regulation establishes minimum standards that ensure the activities, services, and facilities of licensed independent foster homes are conducive to the health, safety and well-being of children and provide for visitation with family and the maintenance of sibling groups when in the best interest of the children. The regulation addresses discharge planning to reunite children with their families, whenever appropriate, and establishes maximum time periods for children to

remain in an independent foster home without oversight of the local department of social services and approval or adjudication of custody by the Juvenile and Domestic Relations Court. The regulation establishes standards to evaluate potential applicants by reviewing background information and the minimum education and experience necessary to care for foster children, thereby reducing the risk of harm to children.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

Sections 63.1-25, 63.1-195, 63.1-196 and 63.1-202 of the Code of Virginia. The regulation does not exceed the scope of the mandate, but does exceed the minimum requirements while strengthening the protection of children by establishing minimum education and experience criteria for licensees; requiring licensees to develop emergency plans in cases of fire, medical or other emergencies; establishing supervision and capacity criteria; establishing criteria regarding medical information, disease prevention, first aid supplies, medication oversight, medical authorizations; and reporting requirements. The regulation also addresses home safety, services to be provided to children and families, positive discipline techniques and prohibited actions exceeding the minimum requirements of the mandate.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

In response to the notice of periodic review of this regulation, one applicant for licensure as an independent foster home has requested that the Minimum Standards for Independent Foster Homes be retained in its current form. There were two requests for information regarding the notice and the agency responded with additional information regarding the periodic review process.

Based on the small number of licensed independent foster homes (3) and the limited number of inquiries regarding licensure as an independent foster home, the Department of Social Services anticipates forming a small informal advisory group to assist in development of the proposal to amend the existing regulation.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition,*

*please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

The goals of this regulation and the proposed amendments are:

1. To protect the health, safety and welfare of children in care by establishing minimum standards for the services provided to children, home environment, family visitation and discharge planning directed towards reuniting children with their families whenever appropriate.
2. To establish standards to evaluate applicants.
3. To establish criteria that allow independent foster homes to maintain sibling groups when in the best interest of the children.
4. To protect the public's health, safety and welfare with the least possible cost and intrusion to the citizens and businesses of the Commonwealth by offering families additional options to care for children when the family is temporarily unable to do so.

The Department of Social Services (Department) has determined that this regulation is essential to protecting the health, safety and welfare of children by establishing minimum requirements for the physical environment and the services to be provided in order to assure that children are provided a safe place to live, are supervised appropriately, and receive care and nurturing when their families are temporarily unable to care for them.

The Department has determined that the regulation can be improved by reorganizing sections of text and clarifying existing language.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

A notice for a 20-day public comment period on this regulation was published in The Virginia Register of Regulations on May 6, 2002. A notice was sent to all licensed independent foster homes and to the three applicants who requested information regarding licensure. Copies of the notice were sent to the regional licensing offices, to the individual licensing inspectors having responsibility for monitoring independent foster homes, and to individuals on the interested citizens' list for the regulation.

Comments from licensing staff as well as current recommendations from the United States Consumer Product Safety Commission and the Center for Disease Control were considered along with technical assistance information received since the regulation was promulgated.

Department of Social Services' licensing standards (existing and proposed) were also reviewed. Alternatives to the homes covered by this regulation include foster homes approved by licensed child-placing agencies and local department of social services. Independent foster homes offer additional choices to families, by allowing parents or guardians to directly place children into a foster home, with the assurance that guidelines have been established regarding the environment and services to be provided to children. In order to provide protection and promote the welfare

and safety of children, established standards of care are necessary. While the number of licensed independent foster homes operating within the Commonwealth is small, the Department is not considering repeal of the regulation because it is necessary to adequately provide for the safety and welfare of children and offers a care option to families needing temporary services.

No comments have been received indicating that the regulation of independent foster homes is unnecessarily burdensome or intrusive. Licensed independent foster homes may meet the needs of:

- a) families with no relatives or friends available to assist when the parent is hospitalized or has an extended illness;
- b) families where the parents are on military assignments or extended business trips; and
- c) parents who need a temporary placement of their children on a 24-hour basis.

### Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

The Department recommends amending the existing regulation to improve readability and clarity, to incorporate statutory changes, strengthen health and safety standards, and establish additional criteria for placement of children that would allow parents and guardians the option of retaining custody during the foster home placement.

### Substance

*Please detail any changes that would be implemented.*

The proposed changes would incorporate statutory changes and improve readability and clarity of existing standards. The proposed changes would also incorporate current health and safety standards already established in other licensing standards.

The following issues will be among those addressed in the proposed amended regulations:

1. Establishing criteria to allow "placement agreements" in addition to, or instead of, temporary entrustment agreements to authorize the placement of a child in an independent foster home. The Department plans to seek guidance from the Office of the Attorney General concerning entrustment agreements and statutory changes regarding the definition of "foster care placements" as well as options which would allow a parent to retain custody during a placement.
2. Instituting individualized service plans for children placed in an independent foster home. The Department plans to seek guidance from the Office of the Attorney General concerning the use of service plans rather than foster care plans.
3. Increasing the period of time that a parent may place a child in an independent foster home to "no longer than six months" in certain circumstances, e.g. military deployments, extended medical illness or recuperation.

4. Updating medical requirements for providers, assistant and household members to allow for TB screening as permitted by Health Department guidelines and change the requirements regarding testing of children as included in "permanent household members".
5. Clarifying the capacity of an independent foster home to strengthen the protection of children by including "other children residing in the home" in the capacity.
6. Prohibiting the use of physical restraint and revising the guidelines established regarding "time-out" and separation to distinguish between the supervision needs of young children and adolescents.
7. Strengthening the requirements for physical accommodations, safety requirements, and sleeping arrangements to better protect infants and young children.
8. Updating the home safety requirements regarding compliance with the Uniform Statewide Building Code and Statewide Fire Prevention Code.
9. Amending the general requirements to include statements regarding responsibility for the home's day-to-day operations and for meeting licensing requirements and to clarify the exceptions extended to family day home providers.
10. Respecting and accommodating diversity. The Department plans to seek guidance from the Office of the Attorney General regarding independent foster homes respecting and accommodating diversity, e.g. cultural or religious practices of children placed in care.
11. Conducting a comprehensive review of the entire regulation to include recommendations from licensing staff, licensees, interested citizens, and the Office of the Attorney General.

### Family Impact Statement

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

A preliminary analysis of proposed amendments to the Minimum Standards of Licensed Independent Foster Homes does not indicate a negative impact on the institution of the family or family stability. The proposed changes would strengthen the authority and rights of parents in the education, nurturing and supervision of their children by establishing guidelines regarding parents retaining custody. Proposed changes to the existing regulation serve to encourage self-sufficiency and promote self-pride by allowing families to select the option that best meets their needs and by increasing parental rights and responsibilities when children are temporarily placed in a foster care setting. There is no anticipated impact on the status of marital commitment or disposable family income.

The proposed changes to the regulation, while strengthening the protection and welfare of children, should not pose any unreasonable hardship to licensees and may clarify or simplify existing requirements. Other proposed changes are required by statute and "best practices" regarding the care of children.